NELSON SANTOS

TL9329-61

NELSANTOS

SPECIAL PROCEDURES ON EXTRAJUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS

Special Rapporteur	:	Mr. Bacre Waly Ndiaye, (Senegal)
Staff in charge	:	Stephan Jeannet Office D-213 Tele.: (41-22) 917 33 53 Daniel O'donnell Office D-106 Tele.: (41-22) 917 39 17
Address	:	Rapporteur on Extrajudicial, Summary, or Arbitrary Executions. Centre for Human Rights, United Nations Office at Geneva, 8-14 avenue de le Paix, 1211 GENEVA 10, SWITZERLAND
Communications:	:	From governments replies should reach the Centre in early December. From non-governmental organizations and others, communications should be transmitted at the beginning of May until mid-September in order to come to the attention of the Commission in the following session. Otherwise, the communications will be considered in a later session.
Note	:	The Chairman of the Commission nominated Mr. Ndiaye to succeed Mr. Amo Wako (Kenya). Mr. Wako was special envoy to East-Timor seeking further information about the massacre. Mr. Wako is invited by Indonesia to visit East-Timor again. Mr Amos Wako was nominated to the post of Minister of Justice of his country.

INTRODUCTION

The mandate of the Special Rapporteur was extended for another three years during the ~~forth~~ forty-eighth session of the Commission. As stated above the Chairman of this session appointed Mr. Bacre W. Ndiaye to succeed Mr. A. Wako in this function.

This thematic procedure ~~was~~ has been established by the Commission since 1982. However, in the 1992 resolution the Commission has widened the mandate of the Special Rapporteur, which now includes "Extrajudicial" and also "Summary or Arbitrary Executions.

A Certain number of procedures ~~have~~ has been established during the ten years of its existence. The mandate of the Special Rapporteur is defined by the nature of the human rights violations and moreover, the practical considerations such as availability of resources and time constraints.

Like other thematic procedures and the Working Groups, the Special Rapporteur is allowed to seek and receive information from Governments, intergovernmental and non-governmental organizations, individuals and groups. It is noted that the majority of the communications received, over 95%, are transmitted by non-governmental organizations. Thus, non-governmental organizations' participation is a essential element in this and other procedures.

TERMS OF REFERENCE

The Special Rapporteur is asked by the commission to pay particular attention to the following issues:

(1) "Right to freedom of opinion": persons discriminated against for having exercised the right of freedom of opinion and expression, also including the freedom of thought, conscience and religion, peaceful assembly, etc.

(2) "Human Rights in administration and justice": particular attention to the independence of Judges, the right to fair trial, human rights and the state of emergency and the question of impunity.

(3) The Special Rapporteur is encouraged to take part in the preparatory committee and the World Conference on Human Rights.

(4) The Commission requests the Special Rapporteur to carry out his mandate with objectivity, non-selectivity and impartiality, in order to enhance and promote international cooperation.

(5) "Human rights and thematic procedures": It is recommended by the Commission for countries which have invited the Special Rapporteur to consider follow-up measures and to provide information and respond to the action of the Spacial Rapporteur in order to carry out his work effectively.

(6) The Special Rapporteur is asked to pay particular attention to violence perpetrated by armed groups and drug traffickers.

(7) To give special attention to the matter of "civil defence forces".

(8) The Special Rapporteur has the mandate to urge governments to refrain from all act of intimidation or reprisal against those cooperating with the United Nations bodies.

(9) The Commission gives the mandate to the Special

Rapporteur to examine and analyze the information brought to his attention.

METHODS OF WORK OF THE SPECIAL RAPPORTEUR

The Secretariat receives a large number of communications providing ~~with~~ information regarding ~~the~~ numerous human rights violations. The main authors of these communications are ~~transmitted by~~ non-governmental organizations; however, the Secretariat also receives communications from individuals, intergovernmental organizations as well as Governments, but in a very small number. These communications are the fundamental element in the work of the Special Rapporteur.

The Special Rapporteur acts upon information brought to his attention and moreover, it is difficult for the Special Rapporteur to decide whether an allegation is credible or whether the allegation is politically motivated. Often, the Special Rapporteur and his staff shall rely on their knowledge and experience; however, communications ~~wish~~ written are received from those organizations which have been cooperating with the United Nations procedures for many years are considered to be reliable.

Similar to other procedures, the main criterion is the information contained concerning the case alleged. Communications which contain more information such as full name, age, place of residence or origin, profession, martial status, etc, and the precise circumstances of the incident, indicating, date, place, description of the event are more likely ~~that the allegation will~~ be considered credible. Allegations which are considered to be credible, a summary of such allegation is then forwarded to the Government in question. But in principle, the Special Rapporteur will transmit all the communications except where there is potential to believe that the information provided is baseless.

The criteria is also equally applied to ~~the~~ Governments, that is, the reply of allegations transmitted to the Government is also taken into account ~~the credibility of the source.~~ It is expected that the Government in question will have more information than the a non-governmental organization or person who forwarded the communication.

The Special Rapporteur will seek on site visits when there are strong ~~allegation to be believed~~ that the situation is ~~of the most~~ concerned. credible indications one to cause great concern

The Special Rapporteur is guided primarily by international standards as indicated in his mandate - Operative paragraph of the resolution, which ~~are~~ credible to all countries. However, ~~the~~ national law may be also taken into account.

The main type of communications sent by Special Rapporteur have been the 'urgent appeals" in circumstances of an imminent danger ~~in~~ to life. Letters transmitting the concerns of the Special Rapporteur

are also sent to the Government in question; however, this is done in less urgent cases.

The Special Rapporteur has a mandate to intervene through "urgent appeals" when there is a threat of death ~~treat~~ or acts of intimidation and reprisal in violation of right to life of those persons cooperating with United Nations human rights procedures.

Communication from Governments providing information on allegations transmitted and other related issues is an important element in the work of the Special Rapporteur. Nonetheless, the replies given by the government are often too vague in substance. Therefore, a minimum criteria is to be fulfilled in order to consider if the allegations prove to be credible. Some of the criterion are as follows:

(i) independent investigation has been carried out and the perpetrators are brought to Justice in particular extrajudicial, summary or arbitrary executions, death threats, death in custody, forced repatriation.

(ii) irregularities in the trial have been redressed effectively.

As stated above, the Special Rapporteur has a mandate to carry out on-site visits. This enables the Special Rapporteur to make himself familiar with the situation in a given country and report to the Commission on Human Rights. The visit of a country does not mean to accuse the country concerned but to help the Government concerned to find solutions to problems that affect the right to life. The visit may be also the only means to verify contradictory information. The visit should not be seen as a replacement of the investigation of the local authorities. Furthermore, the existence of local independent inquiries should not hinder a visit by the special Rapporteur.

COMMENTS

There are some difficulties confronted by the Special Rapporteur. One is that he only acts upon violations brought to his attention, even in situations where there are serious grounds to believe that violations are being committed and a large number are being covered by the media.

The Special Rapporteur and his supporting staff are not in the position to verify the credibility of all communications received, however, they rely mostly on their experiences and knowledge in the past as well as organizations which have been cooperating with different UN procedures. Therefore, this creates a bias in regard allegations received from less-known organizations and in particular entirely new ones.

Another problem arises where ~~there~~ no replies are received from Governments. Often the only possibility to verify the information is to conduct on site mission. However, a further problem arises because the Special Rapporteur is allowed to conduct field visit on the invitation or on the consent of the country concerned. Countries usually avoid such initiatives because it may be seen as a step taken to expose the human rights situation of that particular country. Also, Governments often claim that they do not violate human rights.

An On-site visit is possible when there is great pressure exerted by the Commission to the Government in question to cooperate with United Nations procedures.

Nevertheless, there are also advantages for having this procedure. In most cases it is to established whether the state has complied with its obligations under international law to prevent violations of the right to life.

It pressures the state concerned to carry out independent and partial investigation of the abuses and to identify the perpetrators and bring them to justice.

It allows the international community to have a constructive impact on the national authorities, particularly the legal system, such as a fair trial, rights under armed conflict, etc.

It exposes countries with notorious human rights abuses to the attention of international community and no countries like to have negative publicity. Therefore, such efforts as on site visit and the country concerned ~~to~~ will appear in the final report of the Special Rapporteur, may improve and prevent continuing human right violations.

State concerned may set up special enquiries to avoid international condemnation. However, this should not impede a visit by the Special Rapporteur. It should be noted that the on-site visit of the Special Rapporteur does not have the character of a judicial inquiry but to verify information from different sources.

"Urgent appeals" procedure is effective in preventing executions, torture and other related violations.

CONCLUSIONS

After 10 years of the existence of the mandate, the number of ~~an~~ extra-judicial, summary and arbitrary executions, has not declined. On the contrary, the large number of conflicts and violence around the world has resulted in the increase of violence of the right to life. However, this may also ~~represent~~ that there is an increasing number of persons and organizations are taken the advantage of this procedure.

and thus they affect

Like other procedures, the lack of resources and staff are the main problems faced by the Center for Human for Rights, (thus affects) such the effectiveness of this procedure. Moreover, the Special Rapporteur is not ~~being~~ paid for his position. He is very much occupied with his job and other related commitments and with the increased number of states and communications received, furthermore, communications which are still to be processed (backlog). It significantly increases the workload of the Special Rapporteur and his supporting staff, therefore, they are not able to process all communications. The system needs to be reformed.

new due

However, in the long term together with other thematic procedures and mechanisms, this will contribute to the improvement, prevention of human rights and the implementation of international instruments and standards.

Personal ~~Address~~ of Mr. Ndiaye
AVOCAT À LA COUR
152 AV. DU PRESIDENT LAMINE GUEYE
DAKAR – SENEGAL
Tel: 0221. 22. 1993
21. 20.73
Fax: 0221. 21. 45. 36.

by Nelson SANTOS

Title: Procedures of how to submit Human Rights Abuses to the Rapporteur of Extra-Judicial, Summary or Arbitrary Executions,